

**AGREEMENT BETWEEN AUSTRALIA AND URUGUAY
ON THE PROMOTION AND PROTECTION OF INVESTMENTS,
DONE AT PUNTA DEL ESTE, URUGUAY ON 3 SEPTEMBER 2001**

Documents tabled on 12 March 2002:

- **National Interest Analysis**
- **Text of the proposed treaty action**

Agreement between Australia and Uruguay on the Promotion and Protection of Investments, done at Punta del Este, Uruguay, on 3 September 2001

NATIONAL INTEREST ANALYSIS

Proposed binding treaty action

1. It is proposed that Australia bring into force, by an exchange of notes, the Agreement between Australia and Uruguay on the Promotion and Protection of Investments (the Agreement).

Date of proposed binding treaty action

2. The Agreement was signed on 3 September 2001.

3. In accordance with Article 15, the Agreement will enter into force thirty days after the date on which the Parties have notified each other through diplomatic channels that their constitutional requirements for the entry into force of the Agreement have been fulfilled. It is proposed that the exchange of notes take place in July 2002 to enable entry into force in August 2002.

Date of tabling of the proposed treaty action

4. 12 March 2002.

Summary of the proposed treaty action and why it is in the national interest

5. The Australian Government recognises the importance of promoting the flow of capital for economic activity and its role in expanding economic relations and technical cooperation between countries. The Agreement, by guaranteeing certain treatment for investments, is intended to encourage and facilitate bilateral investment by citizens, permanent residents and companies of Australia and Uruguay, in accordance with the internationally accepted principles of mutual respect for sovereignty, equality, mutual benefit, non-discrimination and mutual confidence. The Agreement will put Australian investors in a better position to benefit from the investment opportunities in Uruguay by providing them with a range of guarantees relating to non-commercial risk.

Reasons for Australia to take the proposed treaty action

5. The Agreement is intended to encourage and facilitate bilateral investment by citizens, permanent residents and companies of Australia and Uruguay. The Agreement would be an important safeguard for Australian companies that wish to participate in major projects in Uruguay. Uruguay is considered to have a relatively open and transparent investment regime.

6. There are no official estimates of investment flows between Australia and Uruguay. However, current Australian investment in Uruguay includes gold and diamond prospecting (Rio Tinto), mining aggregates for the construction industry (Pioneer), a bid to construct a light rail system (Bishop Austrans), a yeast plant (Burns Philp) and cinemas (Hoyts).

7. A number of large Australian companies (including P&O and North) have considered investing in Uruguay but have not so far proceeded. There is also the possibility of a very large (US\$750 million-US\$1 billion) investment by an Australian mining company in a project involving Brazil, Argentina, Paraguay and Uruguay. The Agreement will send a positive message to Australian business about investing in Uruguay.

Obligations

8. The Agreement closely follows the Australian Model Investment Promotion and Protection Agreement (IPPA). It establishes a clear set of obligations relating to the promotion and protection of investments in accordance with each Party's laws, regulations and investment policies. Article 3 requires each Party to encourage, promote and, where lawful and in accordance with applicable investment policies, admit investments by investors (including citizens and permanent residents) and companies of the other Party. Article 4 ensures that investments will receive Most Favoured Nation treatment (i.e. investments of investors of a Party will be treated on a basis no less favourable than investments of investors from third countries).

9. Article 5 requires the Parties to allow investors and their employees to enter and remain in the territory of the other Party to engage in investment activities, while Article 6 requires Parties to make public and readily accessible those laws which pertain to or affect investments.

10. Under Article 7, the Agreement prohibits the expropriation or nationalisation of investments unless it is for a public purpose under due process of law, non-discriminatory, and compensated properly, adequately and effectively in freely convertible currency. Article 8 provides that where an investor suffers loss by war or other armed conflict, revolution, national emergency or other civil disturbance any claim for compensation, restitution, indemnification or other settlement by an investor of a Party will be accorded treatment which is no less favourable than that for investors of any third country.

11. Article 9 requires Parties to permit all funds related to investments can be freely transferred in accordance with the law of the Party which has admitted the investment. Transfers shall be permitted in a freely convertible currency.

12. Article 10 concerns indemnities and guarantees provided by a Party. It ensures that when a Party pays an investor of that Party under a guarantee or other form of indemnity, which it has granted regarding an investment, the other Party must recognise the transfer of any rights acquired regarding that investment.

13. The Parties undertake to consult on matters concerning the interpretation of the Agreement and endeavour to resolve any disputes connected with it by prompt consultations and negotiations (Articles 11 and 12.1). Formal procedures for the settlement of disputes concerning investments between the Parties and between a Party and an investor of the other Party are established under Articles 12 and 13 respectively.

14. Article 14 requires investors to be provided with full access to competent judicial or administrative bodies regarding disputes with other investors and provides for the recognition and enforcement of any resulting judgements or awards.

Implementation

15. The Agreement complies with existing Australian legislation. The Agreement will be implemented within the framework of each country's existing laws and policies relating to foreign investment.

Costs

16. Compliance with the Agreement has few foreseeable direct financial costs for Australia. Costs may be incurred in the event of a dispute between the Parties, should the dispute be submitted to an Arbitral Tribunal at the request of either Party (Article 12). Under these circumstances each Party bears the cost of the arbitrator it has appointed and of its representation in arbitral proceedings, while the cost of the Chairman and the remaining costs of arbitration are borne in equal parts by the Parties unless otherwise decided by the Tribunal (Annex A).

17. Australia and Uruguay are parties to the 1965 Convention on the Settlement of Investment Disputes between States and National of Other States. Under Article 13.2(b) of the Agreement, which deals with the settlement of disputes between a Party and an investor of another Party, an Egyptian investor may refer a dispute relating to an investment in Australia to the International Centre for the Settlement of Investment Disputes (ICSID). In this case, the Australian Government may be required to bear all or part of the cost of arbitration and any relevant ICSID fees, subject to the discretion of the tribunal. The Government would also have to pay the cost of any award handed down in favour of the Uruguayan investor. To date, no case has been referred to the ICSID in relation to Australia's existing investment promotion and protection agreements.

18. Finally, under the Agreement Australia may be liable to pay compensation, indemnification or restitution for losses owing to war or other armed conflict, revolution, national emergency, civil disturbance or similar events in its territory (Article 8), or in the event that an investment is expropriated or nationalised (Article 7). Again, while this is a potential cost it is highly unlikely that this would eventuate in the Australian political and investment environment. In any event, Australia's Constitution provides for guarantees of compensation in the event of expropriation or nationalisation (s. 51(xxxi)).

Consultation

19. The State and Territory Governments were advised of the proposed Agreement with Uruguay through the Commonwealth-States-Territories Standing Committee on Treaties process. No responses have been received.

Regulation Impact Statement

20. No Regulation Impact Statement is required for the proposed treaty action.

Future treaty action: amendments, protocols, annexes or other legally binding instruments

21. The text of the Agreement has no explicit reference to the negotiation of future legally binding instruments or a procedure for its amendment. It may nevertheless be amended at any time by agreement between the Parties in accordance with the Vienna Convention on the Law of Treaties.

Withdrawal or denunciation

22. Article 15(1) provides that the Agreement will remain in force for a period of fifteen years and after that will remain in force indefinitely unless one of the Parties gives one year's written notice of termination to the other Party (Article 15(2)).

23. Article 15(3) provides that the Agreement will continue to be effective in respect of investments made or acquired before the date of termination for a further period of fifteen years from the date of its termination.

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